



Irving Leasing

Irving Leasing Corporation  
Subsidiary of  
Irving Trust Company  
One Pennsylvania Plaza  
New York, NY 10119

212-504-6200

RECORDATION NO. 15058 Filed & Recorded

SEP 28 1986 1-5 5 PM

INTERSTATE COMMERCE COMMISSION

September 26, 1986

Date 9/28/86  
Fee \$ 10.00  
CC Washington, D. C.

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Madame Secretary:

I have enclosed two originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the United States Code.

This document is a Mortgage, a primary document, and is dated September 24, 1986.

The names and addresses of the parties to the Mortgage are as follows:

Mortgagor: Genesee and Wyoming Industries, Inc., 71 Lewis Street, Greenwich, CT 06830.

Mortgagee: Irving Leasing Corporation, One Pennsylvania Plaza, New York, NY 10019.

A description of the equipment covered by the Mortgage follows:

Six (6) General Motors Corporation Electro-Motive Division (EMD) Model GP-40 3000 Horsepower, four axle diesel electric locomotives with the former Conrail road numbers 3056,

September 26, 1986

3057, 3059, 3063, 3072 and 3079, and re-numbered with the following Rochester & Southern Railroad, Inc. road numbers: 101, 102, 103, 104, 105 and 106.

As the locomotives covered by the Mortgage are to be transferred to Rochester & Southern Railroad, Inc. (while Genesee and Wyoming Industries, Inc. will remain liable under the Mortgage), we request that the Mortgage be cross-indexed under Rochester & Southern Railroad, Inc.

A fee of \$10.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to our counsel, James P. Finnegan, Esq., Cadwalader, Wickersham & Taft, 100 Maiden Lane, New York, NY 10038.

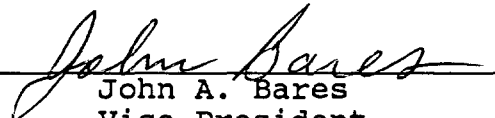
A short summary of the document to appear in the index follows:

Mortgage between Genesee and Wyoming Industries, Inc., 71 Lewis Street, Greenwich, CT 06830, as Mortgagor, and Irving Leasing Corporation, One Pennsylvania Plaza, New York, NY 10019, as Mortgagee, dated September 24, 1986 and covering Six (6) General Motors Corporation Electro-Motive Division (EMD) Model GP-40 3000 Horsepower, four axle diesel electric locomotives with the former Conrail road numbers 3056, 3057, 3059, 3063, 3072 and 3079, and re-numbered with the following Rochester & Southern Railroad, Inc. road numbers: 101, 102, 103, 104, 105 and 106.

Very truly yours,

IRVING LEASING CORPORATION

By

  
John A. Bares  
Vice President

Interstate Commerce Commission

Washington, D.C. 20423

9/28/86

OFFICE OF THE SECRETARY

James P. Finnegan, Esq.  
Cadwalader, Wickersham & Taft  
100 Maiden Lane  
New York, N.Y. 10038

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/28/86 at 1:55pm, and assigned re-recording number(s). 15058

Sincerely yours,

*Noreta R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

SEP 28 1986 1:55 PM

## MORTGAGE OF LOCOMOTIVES

INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE, made as of this 24th day of September, 1986, by Genesee and Wyoming Industries, Inc. ("Mortgagor"), a Delaware corporation with its office and principal place of business at 71 Lewis Street, Greenwich, Connecticut 06830, to Irving Leasing Corporation ("Mortgagee"), a New York corporation, with an office at One Pennsylvania Plaza, New York, New York 10119.

WHEREAS, Mortgagor has purchased or will purchase from Mortgagee for an aggregate purchase price of \$509,884.02 ("Purchase Price") certain railroad locomotives ("Locomotives") described in Exhibit A hereto and has agreed to pay to Mortgagee the Purchase Price plus interest thereon pursuant to the terms of a certain Promissory Note and Agreement dated the date hereof ("Promissory Note") attached hereto as Exhibit B.

## W I T N E S S E T H:

That Mortgagor does hereby grant, bargain, sell and release unto Mortgagee, its successors and assigns forever, all and singular and all of the estate, right, title and interest of Mortgagor in and to the Locomotives described in Exhibit A attached hereto acquired or to be acquired by the Mortgagor on the date of the execution and delivery of this Mortgage, or hereafter acquired by the Mortgagor, together with all accessories, equipment, parts and appurtenances appertaining or attached to any of the Locomotives, whether now owned or hereafter acquired by the Mortgagor, and all substitutions, renewals and replacements of and additions, improvements, accessories, and accumulations to any and all of the Locomotives, including all additions thereto which are now or shall hereafter be incorporated therein, and any proceeds of and any unearned premiums on any insurance policies now or hereafter covering any part of the Locomotives, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, and any awards or payments, including interest thereon, which may be made with respect to any part of the Locomotives, whether in connection with the exercise of the right of eminent domain (including any transfer made in lieu of the exercise of such right) or in connection with any injury to or decrease in value of any part of the Locomotives, together with all the rents, issues, income, profits and avails thereof, all of which Locomotives, other properties, rights and interests hereby transferred, conveyed and mortgaged or intended so to be are hereinafter referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed and assigned, or, intended to be conveyed or assigned, unto Mortgagee, its successors and assigns forever.

PROVIDED, ALWAYS, and the condition of these presents is such that if Mortgagor shall pay or cause to be paid the Purchase Price and interest thereon as and when the same shall become due and payable in accordance with the terms of this Mortgage and the Promissory Note and all other sums as may be payable under the provisions of the Promissory Note or this Mortgage (collectively, the "Indebtedness") and shall perform, observe and comply with the covenants, terms and conditions in the Promissory Note and in this Mortgage contained, expressed or implied, to be performed, observed or complied with by and on the part of Mortgagor, then these presents and the rights hereunder shall cease, determine and be void; otherwise to be and remain in full force and effect. This Mortgage is given and intended as a collateral and continuing security for the payment of the Indebtedness, whether the Indebtedness shall at any time or from time to time have been reduced or paid in full and thereafter increased or reincurred and whether such Indebtedness may at any time or from time to time exceed the total obligations incurred by Mortgagor under the Promissory Note, and no renewal of or extension of time of payment of the Indebtedness or any part thereof, and no agreement not to sue or to release or discharge any person liable therefor or thereon, or release or exchange of other collateral or any act or thing whatsoever, save payment as provided in this paragraph, shall diminish, discharge, impair or affect this Mortgage or the lien thereof or the security afforded thereby.

AND, Mortgagor covenants with Mortgagee that upon the occurrence and continuation of an Event of Default as defined in Article IV of the Promissory Note, Mortgagee may

- (a) upon such notice, if any, as may be required by applicable law, take or cause to be taken by its agent or agents, immediate possession of the Mortgaged Property or any portion thereof, without liability to return to Mortgagor any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of Mortgagor and for such purpose may enter upon the premises of Mortgagor or any other premises where the Mortgaged Property may be located and may use and employ in connection with such removal any services, supplies and aids and any available trackage and other facilities of Mortgagor; or
- (b) foreclose upon, sell, assign, transfer and deliver all or any portion of the Mortgaged Property, including all or any estate, right, title and

interest, claim and demand therein, and right of redemption thereof, at any private sale or public auction with or without demand, advertisement or notice (except as may be required by applicable law) of the date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Mortgagee, in its sole discretion, may determine, or as may be required by applicable law; or

- (c) exercise any rights or remedies given to secured parties under the Uniform Commercial Code as in effect in New York or exercise a power of sale or any other right given to mortgagees under applicable law; or
- (d) require Mortgagor to cause, at its own expense and risk, the Mortgaged Property to be placed upon such storage tracks of Mortgagor or any of its affiliates as Mortgagee may designate, and permit Mortgagee to store the Mortgaged Property on such tracks at the risk of Mortgagor without charge for insurance, rent or storage, until the Mortgaged Property has been sold, leased or otherwise disposed of by Mortgagee; or
- (e) require Mortgagor to cause the Mortgaged Property to be transported to any place on the lines of the railroad operated by Mortgagor or any of its affiliates or to any connecting carrier for shipment, all as directed by Mortgagee.

During any storage period pursuant to clause (d) above, Mortgagor will, at its own cost and expense, insure (to the same extent as provided in Section 3.01(c) of the Promissory Note), maintain and keep the Mortgaged Property in good order and repair (to the same extent as provided in Section 3.01(i) of the Promissory Note) and will permit the inspection of the Mortgaged Property by Mortgagee, Mortgagee's representatives and prospective purchasers, lessees and users (to the same extent as provided in Section 3.01(f) of the Promissory Note). Notwithstanding the provisions of Section 5.06 of the Promissory Note, the obligations of Mortgagor set forth in this paragraph shall be the personal obligations of the Mortgagor. The agreement of Mortgagor to deliver the Mortgaged Property and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, Mortgagee shall be entitled to a decree against Mortgagor requiring specific performance hereof. Mortgagor hereby expressly waives any and all claims against Mortgagee and its agent or agents for damages in connection with any retaking of any unit of the Mortgaged Property pursuant to the terms of this Mortgage.

Mortgagor agrees that any notice by Mortgagee of the sale, disposition or other intended action hereunder or in connection herewith, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to Mortgagor if such notice is mailed by certified or registered mail, postage prepaid, at least ten (10) days prior to such action, to Mortgagor's address specified above, ATTN: President.

The terms of this Mortgage and all rights and obligations hereunder shall be construed and interpreted in accordance with the laws of the State of New York, in which state it has been executed and delivered.

Nothing in this Mortgage shall be deemed to affect or limit any of the terms or conditions of the "Proposal Memorandum for Six (6) General Motors Model GP 40 Locomotives, Seven Year Financing", dated March 14, 1986, made by Mortgagee to Mortgagor and accepted by Mortgagor on April 2, 1986, between Mortgagor and Mortgagee, and the letter agreement, dated April 16, 1986, as amended and supplemented by the letter agreement, dated April 14, 1986, between Mortgagor and Mortgagee, the provisions of which documents shall be deemed to survive the execution and delivery of this Mortgage or the terms and conditions of the Intercreditor Agreement attached hereto as Exhibit C.

IN WITNESS WHEREOF, each of the parties hereby has caused this instrument to be signed and its duly authorized officers and its corporate seal hereunto affixed as of the day and year first above written.

GENESEE AND WYOMING INDUSTRIES, INC.

By: *William W. Hartung*

*Treasurer*

(Corporate Seal)

ATTEST:

*George Bares*

IRVING LEASING CORPORATION

By: *John Bares*

*Vice President*

(Corporate Seal)

ATTEST:

*Barbara Perry*

ACKNOWLEDGMENT AND CONSENT

Rochester & Southern Railroad, Inc., a New York corporation ("RSR"), hereby consents to the foregoing Mortgage of Locomotives ("Mortgage") made by Genesee and Wyoming Industries, Inc. ("Mortgagor") to Irving Leasing Corporation ("Mortgagee"). RSR hereby acknowledges that its interest in the Mortgaged Property referred to in such Mortgage is subject to the rights of Mortgagee under the Mortgage, agrees to comply with all applicable provisions of the Promissory Note and Agreement, dated the date of the Mortgage, made by Mortgagor to Mortgagee, relating to the Mortgaged Property, and agrees to perform any act reasonably requested by Mortgagee for the purpose of protecting the security interest in the Mortgaged Property granted to Mortgagee by Mortgagor. Furthermore, in consideration of the transfer of the Mortgaged Property from Mortgagee to Mortgagor, RSR hereby grants to Mortgagee a security interest in the right, title and interest of RSR in and to the Mortgaged Property acquired by RSR from Mortgagor.

ROCHESTER & SOUTHERN RAILROAD, INC.

By: Matthew Hastings

Treasurer

(Corporate Seal)

ATTEST:

Joyce Baudet



STATE OF Connecticut )  
COUNTY OF Fairfield ) SS:

On this 24<sup>th</sup> day of September, 1986, before me personally came Mark W. Hastings, to me personally known, who being by me duly sworn, <sup>city</sup>says that he resides at 144 Main Street in the Town of Norwalk; that he is Treasurer of Genesee and Wyoming Industries, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Joan P. Stephansen

JOAN P. STEPHANSEN  
NOTARY PUBLIC

MY COMMISSION EXPIRES MARCH 31, 1987

STATE OF New York )  
COUNTY OF New York ) SS:

On this 26<sup>th</sup> day of September, 1986, before me personally came John Pares, to me personally known, who being by me duly sworn, says that he resides at 17 Overlook Drive in the Town of Greenwich, Conn; that he is Vice President of Irving Leasing Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Marie C. Torrisi

MARIE C. TORRISI  
Notary Public, State of New York  
No. 41-4659779  
Qual. in Manhattan & Queens Cty.  
Commission Expires March 30, 1987

STATE OF Connecticut )  
COUNTY OF Fairfield )

SS:

On this 24<sup>th</sup> day of September, 1986, before me personally came Mark W. Hastings, to me personally known, who being by me duly sworn, <sup>city</sup> says that he resides at 144 Main Street in the ~~Town~~ of Norwalk; that he is Treasurer of Rochester & Southern Railroad, Inc., the corporation described in and which acknowledged and consented to the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Joan P. Stephansen

JOAN P. STEPHANSEN  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MARCH 31, 1987

Exhibit A

Six (6) General Motors Corporation Electro-Motive Division (EMD) Model GP40 3000 Horsepower four axle diesel electric locomotives with the former Conrail road numbers 3056, 3057, 3059, 3063, 3072 and 3079 overhauled and refurbished under contract by Chrome Locomotive, Inc. numbered by Rochester & Southern Railroad as follows:

<u>Former Conrail Road No.</u>	<u>Serial No.</u>	<u>RSR Rd. No.</u>
3056	33220	101
3057	33221	102
3059	33223	103
3063	33227	104
3072	33236	105
3079	33243	106

EXHIBIT B

PROMISSORY NOTE  
AND AGREEMENT

\$509,884.02

New York, New York

September \_\_, 1986

GENESEE AND WYOMING INDUSTRIES, INC., a Delaware corporation ("Borrower"), for value received, hereby promises to pay to the order of IRVING LEASING CORPORATION ("Lender"), a New York corporation, on or before October 1, 1993 at its office at One Pennsylvania Plaza, New York, New York 10119, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, the principal sum of Five Hundred Nine Thousand Eight Hundred Eighty-Four and 02/100 Dollars (\$509,884.02) or the portion thereof deemed to have been advanced by the Lender pursuant to the fourth paragraph of this Note, together with interest (computed on the basis of the actual days elapsed on a 360-day year) on the unpaid balance thereof, computed from the date hereof, at the rate of 9.50% per annum, as follows: (i) interest only, payable on October 1, 1986; and (ii) thereafter in twenty-eight consecutive quarterly installments, payable on the first day of each January, April, July and October, commencing January 1, 1987 and continuing until October 1, 1993, the first twenty-seven such quarterly installments to be equal payments of principal and interest, each thereof in the amount of \$23,796.31 and the last such quarterly installment to be in an amount of \$76,338.26; provided, however, upon the total loss or constructive total loss, condemnation or confiscation of any one or more of the Locomotives (as such term is defined in the Mortgage of Locomotives ("Mortgage"), dated the date hereof, from Borrower to Lender), an amount equal to one-sixth (1/6) of the then remaining unpaid principal amount of this Note (determined by reference to Exhibit A hereto) multiplied by the number of Locomotives lost, condemned or confiscated, plus interest thereon, shall become immediately due and payable. After such amount shall have been paid in full, the amount of each quarterly installment due hereunder shall be reduced to reflect a prepayment of this Note allocated proportionately to each quarterly installment. Notwithstanding the foregoing, this Note shall bear interest at the rate of 11.88% per annum on overdue installments of principal, and, to the extent that the same be lawful, on any overdue interest.

Each installment, when paid, shall be applied first to accrued and unpaid interest and the balance shall be applied to

principal. Said installment payments shall be made to the holder of this Note without presentation for notation of such payments.

This Note may be prepaid at any time, without premium or fee, provided that the amount of any such prepayment, if less than the full amount of the remaining indebtedness, shall not be less than the amount of one installment, or a multiple thereof. Any such prepayment shall be applied to the payment of installments in the inverse order of their maturity.

This Note has been executed and delivered in payment for the Locomotives and is secured by the Mortgage. Proceeds of the loan made hereunder shall be deemed to be advanced in an amount equal to \$84,980.67 upon each delivery by Lender to Borrower, and acceptance by Borrower, of a Locomotive and the execution and delivery by Lender to Borrower, and the acceptance by Borrower, of a bill of sale, in the form of Exhibit B hereto covering such Locomotive. Reference is hereby made to the Mortgage for a description of the security granted thereunder and the rights of the holder hereof with respect thereto.

Borrower hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note. The provisions of this Note shall inure to the benefit of and be binding upon any successor of Borrower and shall extend to any holder hereof.

Nothing in this Note shall be deemed to affect or limit any of the terms or conditions of the "Proposal Memorandum for Six (6) General Motors Model GP 40 Locomotives, Seven Year Financing", dated March 14, 1986, made by Lender to Borrower and accepted by Borrower on April 2, 1986, as amended and supplemented by the letter agreement, dated April 14, 1986, between Borrower and Lender, the provisions of which documents shall survive the execution and delivery of this Note.

#### I. Conditions.

Section 1.01. The obligation of Lender to make the loan, or any portion thereof, pursuant to the terms hereof is subject to the following conditions precedent:

(a) Lender shall have received certified copies of corporate resolutions of Borrower evidencing all corporate action taken by Borrower to authorize the execution and delivery of this Note and the Mortgage and such other documents as Lender may reasonably request.

(b) Lender shall have received a favorable written opinion of counsel for Borrower, Harter, Secrest & Emery, dated the date hereof and satisfactory in form and substance to Lender,

as to the validity and perfection of Lender's security interest in the Locomotives and as to the matters referred to in Section 2.01(a), (b), (c), (d) and (f).

(c) Lender shall have received, in form and substance satisfactory to Lender and its counsel, the Mortgage, properly executed by Borrower and pursuant to which Borrower, as collateral security for the repayment of the indebtedness evidenced by this Note and the performance of its obligations hereunder, shall grant to Lender a continuing first priority security interest in and lien on the Locomotives.

(d) Borrower shall, at its cost and expense, have caused the Mortgage and this Note to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

(e) Lender shall have received evidence satisfactory to Lender that Borrower has obtained insurance required by Section 3.01(c) hereof.

(f) Borrower shall have made the representation and warranty contained in Section 2.01(g) hereof with respect to the Locomotive or Locomotives being purchased with the portion of the loan being advanced.

## II. Representations and Warranties.

Section 2.01. Borrower hereby represents and warrants to Lender that:

(a) Borrower is a corporation duly organized and existing in good standing under the laws of Delaware and has the corporate power to own its properties and to carry on its business as now being conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary.

(b) Borrower has full power and authority to execute and deliver the Mortgage and this Note and to incur the obligations provided for in the Mortgage and this Note, all of which have been duly authorized by all proper and necessary corporate action and no consent or approval of any public authority is required as a condition to the validity of the Mortgage or this Note.

(c) There are no actions, suits or proceedings pending or, so far as the officers of Borrower know, threatened before any court or administrative agency which will materially adversely affect the financial condition or operations of

Borrower or its ability to perform its obligations hereunder or under the Mortgage.

(d) This Note and the Mortgage constitute the valid and legally binding obligations of Borrower enforceable in accordance with their terms.

(e) As of the date hereof, Borrower's aggregate indebtedness, direct and/or indirect (including guarantees) and including the indebtedness evidenced by this Note, does not exceed \$\_\_\_\_\_.

(f) The execution, delivery and/or performance of this Note and/or the Mortgage will not conflict with or in any way be prevented by any charter, by-law or preference stock provision of Borrower or by any provision of any existing mortgage, indenture, contract or other agreement binding on Borrower or affecting any of its properties.

(g) Assuming that Borrower has acquired good and marketable title to the Locomotives from Lender, Borrower has good and marketable title to all of its properties and assets, including without limitation the Locomotives being purchased on the date hereof, free and clear of all liens, charges, security interests, and encumbrances except for the lien of the Mortgage and except for, with respect to its properties and assets other than the Locomotives, (i) leases, easements, restrictions, exceptions, reservations or defects which, in the aggregate, do not interfere materially with the continued use of such property for the purposes for which they are used or affect materially the value thereof or use thereof by Borrower, (ii) liens, if any, for current taxes not yet due and payable or being contested in good faith by appropriate proceedings, and (iii) the interests of General Electric Credit Corporation ("GECC"), a New York corporation, under the Pledge Agreement (the "GECC Pledge Agreement"), dated as of June 30, 1986, between GECC and Borrower.

(h) Borrower has filed all tax returns which have been required to be filed to date by any jurisdiction, and has paid all taxes which have become due pursuant to said returns or pursuant to any assessments received by Borrower, except such as are being contested in good faith by appropriate proceedings. In the case of those tax assessments which are being contested and for which a lien may attach to any of the Locomotives, Borrower shall immediately on contesting deposit with Lender adequate reserves, in an amount equal to its potential tax liability on the contested assessments, to be applied upon the occurrence and continuation of an Event of a Default (as such term is defined in Section 4.01 hereof) to the satisfaction and discharge of any lien on the Locomotives and to be returned to Borrower upon

either the resolution of such contest in Borrower's favor or the payment of the contested assessment by Borrower.

(i) No event set forth in Section 4043(b) of the Employer Retirement Income Security Act of 1974 ("ERISA") has occurred with respect to any Plan of Borrower as defined in Section 4021(a) of ERISA with respect to which Borrower has incurred any liability to the Pension Benefit Guaranty Corporation under Section 4062 of ERISA.

(j) Borrower is the beneficial owner of the sole authorized, issued and outstanding share of stock of Rochester & Southern Railroad, Inc. ("RSR"), a New York corporation, subject to the terms of the GECC Pledge Agreement.

### III. Covenants.

Section 3.01. Affirmative Covenants. Until payment in full of this Note and performance of all other obligations of Borrower hereunder and under the Mortgage, Borrower will:

(a) Furnish to Lender (i) as soon as available but in no event more than 45 days after the end of each quarterly period of each fiscal year, an unaudited balance sheet of Borrower as of the close of such quarterly period and an unaudited statement of income and retained earnings to the close of such period, certified by a financial officer of Borrower; (ii) as soon as available but in no event more than 120 days after the close of each fiscal year, copies of the annual report of Borrower in reasonable detail satisfactory to Lender, prepared in accordance with generally accepted accounting principles together with the opinion of Price Waterhouse & Co. or other independent certified public accountants satisfactory to Lender with respect thereto, which annual report shall contain financial statements consisting of a balance sheet of Borrower as of the end of such fiscal year and a statement of earnings of Borrower for such fiscal year; (iii) as soon as available but in no event more than 90 days after the close of each fiscal year, a certificate of the chief financial officer of Borrower stating whether anything in such officer's examination has revealed the occurrence of an Event of Default hereunder or an event which would constitute such an Event of Default with the giving of notice or the lapse of time or both, and, if so, stating the facts with respect thereof; and (iv) such additional information, reports, or statements with respect to the financial condition of Borrower as Lender may from time to time reasonably request.

(b) Pay and discharge all taxes, assessments and governmental charges upon Borrower, its income and its properties prior to the date on which penalties are attached thereto unless



and to the extent only that such taxes shall be contested by it in good faith and by appropriate proceedings.

(c) (i) Maintain, or cause any lessee or transferee to maintain, casualty and liability insurance with responsible insurance companies satisfactory to Lender on the Locomotives as follows: (a) all risk casualty coverage in an amount equal to or greater than the replacement value of the Locomotives, but in no event less than the outstanding principal amount of this Note and (b) liability coverage against such risks, in such amount and on such terms as are customarily obtained by corporations of established reputation engaged in the business of providing transportation by rail, but in no event shall such coverage be in an amount less than Five Million Dollars (\$5,000,000.00).

(ii) All policies with respect to such insurance shall: (a) name Lender as an additional insured and loss payee; (b) provide for all payments thereunder to be made to Lender; (c) include waivers by the insurer of all claims for premiums against Lender and any right of set-off, counterclaim or other deduction against Lender; and (d) provide that if the insurers cancel such insurance for any reason whatever, or the same is allowed to lapse for nonpayment of premium, or the scope of coverage thereof changed in any materially adverse way to any named insured, such cancellation, lapse or change shall not be effective as to Lender for ten days after dispatch to Lender, by Federal Express, of written notice by such insurers in cases of nonpayment of a premium and for thirty days after dispatch to Lender, by Federal Express, of written notice by such insurers of any other cancellation, lapse or change.

(iii) Borrower shall, at its own expense, make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance.

(iv) In the event that Borrower shall fail to maintain insurance as herein provided, Lender may at its option on five business days' prior written notice to Borrower (which notice may be given five business days prior to the expiration of such insurance) provide such insurance (giving Borrower prompt written notice thereof) and, in such event, Borrower shall, upon demand from time to time, reimburse Lender for the cost thereof together with interest on the amount of such cost from the date of payment thereof at the rate of 11.88% per annum. Notwithstanding the provisions of Section 5.05 hereof, Borrower's obligation under this clause (iv) to reimburse Lender shall be the personal obligation of Borrower.

(v) Borrower shall, not later than June 15th of each year, commencing on or before June 15, 1987, furnish to Lender a certificate of an independent insurance broker acceptable to

- Lender evidencing the maintenance of the insurance required hereunder.

(vi) Borrower shall deliver to Lender upon Lender's request copies of all such insurance policies then in effect.

(d) Maintain its corporate existence in good standing.

(e) Notify Lender promptly in writing (i) in the event that any litigation or proceeding is instituted or threatened against Borrower which could result in a liability in excess of \$100,000 or in the opinion of Borrower might materially adversely affect the financial condition, business or operations of Borrower and which is not adequately covered by insurance, and (ii) of the report of any reportable Event pertaining to Borrower as defined in Section 4043(b) of ERISA.

(f) Permit representatives of Lender, or cause such representatives to be permitted, to visit and inspect any of the properties of Borrower, including without limitation the Locomotives (regardless of whether the Locomotives shall have been transferred to RSR), to examine all its books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants (and by this provision Borrower authorizes said accountants to discuss the finances and matters reasonably related to the financial condition of Borrower) all at such reasonable times and as often as may be reasonably requested.

(g) Cause the Locomotives to be numbered with the identification numbers set forth in Exhibit A to the Mortgage, and keep and maintain, distinctly, permanently and conspicuously marked on the sides of the Locomotives in letters not less than one inch in height, the words "Ownership subject to a Mortgage and Promissory Note and Agreement filed with the Interstate Commerce Commission", with appropriate changes thereto as from time to time may be required by law or in the opinion of Lender, in order to protect Lender's interest in the Locomotives and the rights of Lender under this Note and the Mortgage. Borrower will not place the Locomotives in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. Borrower will not change the identification number or numbers of the Locomotives unless and until (i) a statement of new number or numbers to be substituted therefor shall have been given to Lender and duly filed and deposited by Borrower in all public offices where this Note and the Mortgage shall have been filed and deposited and (ii) Borrower shall have furnished Lender with an opinion of counsel to the effect that such statement has been so filed and deposited, and that no other filing, deposit or giving of notice

with or to any Federal, District of Columbia, state or local government or agency thereof is necessary to protect the rights of Lender in and to the Locomotives. Except as provided in the immediately preceding sentence, Borrower will not allow the name of any person, association or corporation to be placed on the Locomotives as a designation that might be interpreted as a claim of ownership; provided, however, that the Locomotives may be lettered with the names or initials or other insignia customarily used by Borrower or its affiliates.

(h) Promptly, at its own expense, pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Locomotives or the interest of Lender other than the second mortgage (the "GECC Mortgage") on the Locomotives in favor of GECC pursuant to the Mortgage, Security Agreement and Assignment of Leases, dated as of June 30, 1986, between RSR and GECC, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises (other than the GECC Mortgage). Notwithstanding the provisions of Section 5.05 hereof, the obligations of Borrower under this clause (h) shall be the personal obligations of Borrower.

(i) At its own expense and in a manner no less thorough and complete than is the prudent industry standard for the Locomotives, maintain, service and adhere to Borrower's standard preventive maintenance schedule with respect to the Locomotives which will include testing, repair and overhaul so that the Locomotives will remain (a) in as good operating condition as when delivered by Lender to Borrower (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws, regulations and industry standards, and (c) suitable for immediate purchase or lease and immediate regular use in main line freight service. In no event shall the Locomotives be maintained or serviced to a lesser standard for maintenance, or serviced on a basis less frequent than the maintenance standard, or maintenance or service scheduling basis, employed as of any given time by Borrower for any similar equipment owned or leased by it.

(j) At its own cost and expense, from time to time do and perform any act and will execute, acknowledge, deliver, file, register, deposit and record any and all instruments required by law or reasonably requested by Lender for the purpose of proper protection, to the satisfaction of counsel for Lender, of its interest in the Locomotives and its rights under this Note and the Mortgage or for the purpose of carrying out the intention of this Note and the Mortgage, and promptly furnish to Lender certificates or other evidence of such filing, registering, depositing and recording satisfactory to Lender.

(k) At all times comply in all respects (including, without limitation, with respect to the use, maintenance and

operation of the Locomotives) with all applicable laws of the jurisdictions in which its operations involving the Locomotives may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives (collectively "Applicable Laws"), to the extent that such Applicable Laws affect the title, operation or use of the Locomotives, and in the event that, prior to the satisfaction and discharge of the Mortgage, (i) such laws or rules require any alteration, replacement, addition or modification of or to any part on the Locomotives Borrower will comply therewith at its own expense or (ii) such laws or rules require disposal, removal and dismantlement of or stripping any part or parts of the Locomotives from the Locomotives, Borrower promptly will give Lender written notice to such effect in reasonable detail and will set forth in detail a reasonable course of action, determined by Borrower in good faith and according to Borrower's normal business practice, for such disposal, removal and dismantlement of or stripping such part or parts of the Locomotives; provided, however, that Borrower may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Lender, adversely affect the property or rights of Lender under this Note or the Mortgage.

(1) Indemnify, protect and hold harmless Lender from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into or the performance of this Note and the Mortgage, the retention by Lender of a security interest in the Locomotives, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Locomotives, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Locomotives resulting in damage to property or injury or death to any person; except, however, any losses, damages, injuries or liabilities due to, and any claims for, wilful misconduct or gross negligence of Lender. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness under this Note and the Mortgage, and the release of Lender's security interest in, the Locomotives or the termination of this Note and the Mortgage in any manner whatsoever. None of the indemnities in this clause (1) shall be deemed to create any right of subrogation in any insurer or third party against Lender therefor, from or under Borrower, whether because of any claim paid or defense provided for the benefit

thereof or otherwise. Notwithstanding Section 5.05 hereof, the obligation of Borrower under this clause (1) shall be the personal obligation of Borrower.

(m) Give prompt notice to Lender of any material and adverse change in the business prospects or financial condition of Borrower from the date of the most recent financial statements or the ability of Borrower to perform its obligations under this Note or the Mortgage.

Section 3.02. Borrower shall not, without the prior written consent of Lender, sell, transfer, assign or otherwise dispose of, or permit any lien, charge or other encumbrance to attach to, any of the Locomotives other than the GECC Mortgage. Lender hereby consents to the transfer of the Locomotives by Borrower to RSR provided that (i) Borrower shall remain fully obligated under the terms of this Note and the Mortgage; (ii) RSR shall acknowledge in writing that its interest in the Locomotives is subject to the rights of Lender under the Mortgage, shall agree to comply with all applicable provisions of this Note relating to the Locomotives and shall agree to perform any act reasonably requested by Lender for the purpose of protecting Lender's security interest in the Locomotives; and (iii) Borrower shall provide Lender with an opinion of Borrower's counsel satisfactory to Lender that Lender's security interest in the Locomotives shall remain a fully perfected first priority security interest following such transfer.

Section 3.03. Lender agrees that RSR may perform on behalf of Borrower any act with respect to the Locomotives required to be performed by Borrower hereunder and that performance by RSR of any such act shall satisfy the obligations of Borrower hereunder with respect to such act.

#### IV. Events of Default.

Section 4.01. Events of Default. The occurrence of one or more of the following shall constitute an Event of Default:

(a) Default in the payment of any amount due on this Note for a period of 10 days.

(b) Default in Borrower's obligation under Section 3.01(c), 3.01(g) or 3.01(h) hereof.

(c) Default in the due observance or performance of any other term, covenant, or agreement contained in this Note or the Mortgage, and such default shall have continued unremedied for a period of 30 days after receipt by Borrower of notice thereof.

(d) Any representation or warranty made herein by Borrower or any statement or representation made in any certificate, report or opinion delivered pursuant hereto shall prove to have been incorrect in any material respect when made.

(e) Any obligation of Borrower for the payment of borrowed money in excess of \$100,000 becomes or is declared to be due and payable prior to the expressed maturity thereof.

(f) There shall occur or exist any event or condition which causes the Pension Benefit Guaranty Corporation to seek a termination of a Plan of Borrower under Section 4042 of ERISA or any regulations pertaining to said Act, or Borrower shall neglect or refuse to pay, after demand, any employer's liability under Sections 4062, 4063 or 4064 of ERISA or any such regulation, in each case under ERISA as now or hereafter amended, or under any similar law or regulation from time to time in effect.

(g) A court having jurisdiction shall enter a decree or order for relief in respect of Borrower or RSR in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or shall enter a decree or order for relief in respect of Borrower or RSR in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of Borrower or RSR or for any substantial part of either of its properties, or ordering the winding up or liquidation of the affairs of Borrower or RSR, and such decree or order shall remain unstayed and in effect for a period of 60 days.

(h) Borrower or RSR shall have an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case under any such law, or shall apply for or consent to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of Borrower or RSR or for any substantial part of its properties, or shall take any corporate action in contemplation of any of the foregoing.

(i) Any order, judgment or decree shall be entered against Borrower or RSR decreeing dissolution or split up of Borrower or RSR and such order shall remain undischarged or unstayed for a period in excess of 30 days.

(j) Any judgment against Borrower or RSR or any attachment against its property for any amount in excess of \$100,000 remains unpaid, unstayed or appeal, undischarged,

unbonded or undismissed for a period of 25 days from the date of service on Borrower or RSR of notice of judgment or attachment.

Then upon the happening of any of the foregoing Events of Default, this Note shall become and be immediately due and payable and Lender shall have the right to exercise any and all of the remedies given Lender under the Mortgage and any other remedies available under applicable law. Borrower expressly waives any presentment, demand, protest or other notice of any kind.

#### V. Miscellaneous.

Section 5.01. Each and every right, power and remedy granted to Lender by this Note or the Mortgage or any other documents, or allowed by law or equity, shall be cumulative and not exclusive of any other and may be exercised by Lender from time to time. No failure on the part of Lender to exercise, and no delay in exercising, any rights under this Note or any other document, including the Mortgage, shall operate as a waiver thereof, nor shall any single or partial exercise by Lender of any such right preclude any other or future exercise thereof or the exercise of any other right or rights.

Section 5.02. All notices, statements, certificates, requests and demands herein provided for shall be effective upon receipt, whether sent by mail, by hand or by telex to: (i) Genesee and Wyoming Industries, Inc., 71 Lewis Street, Greenwich, Connecticut 06830, Attention: President; and (ii) Irving Leasing Corporation, One Pennsylvania Plaza, New York, New York 10119, Attention: General Manager.

Section 5.03. All agreements, representations and warranties made herein or in writing in connection herewith shall survive the delivery of this Note; this Note cannot be changed orally but only by an instrument in writing signed by the party against whom enforcement, modification or discharge is sought.

Section 5.04. This Note, the Mortgage and the rights and obligations of the parties hereunder and thereunder shall be construed and interpreted in accordance with the laws of the State of New York.

Section 5.05. Except as specifically provided in this Note, the obligation of Borrower hereunder shall be without recourse to Borrower, and Lender shall look only to the collateral described in the Mortgage for payment of Borrower's obligations hereunder. Lender agrees, for itself, its successors and assigns, and on behalf of any holder of this Note, that, except for the obligations of Borrower under Sections 3.01(c), 3.01(h) and 3.01(l) hereof, for which Borrower shall be personally liable, Lender will not seek judgment against

Borrower for a deficiency in any action to enforce Lender's rights hereunder or under the Mortgage.

IN WITNESS WHEREOF, Genesee and Wyoming Industries, Inc. and Irving Leasing Corporation have caused this Promissory Note and Agreement to be duly executed as of the date first above written.

Attest:

GENESEE AND WYOMING INDUSTRIES, INC.

By \_\_\_\_\_

Attest:

IRVING LEASING CORPORATION

By \_\_\_\_\_



# EXHIBIT A

## G & W Loan Amortization Schedule

Quarterly payments in arrears at 9.5%

Interest at 9.5%

Payment No	Principal Beg of Period	Payment	Interest	Principal Payment
1	\$509,884.02	\$23,796.31	\$12,109.75	\$11,686.56
2	\$498,197.46	\$23,796.31	\$11,832.19	\$11,964.12
3	\$486,233.34	\$23,796.31	\$11,548.04	\$12,248.27
4	\$473,985.07	\$23,796.31	\$11,257.15	\$12,539.16
5	\$461,445.90	\$23,796.31	\$10,959.34	\$12,836.97
6	\$448,608.93	\$23,796.31	\$10,654.46	\$13,141.85
7	\$435,467.08	\$23,796.31	\$10,342.34	\$13,453.97
8	\$422,013.12	\$23,796.31	\$10,022.81	\$13,773.50
9	\$408,239.62	\$23,796.31	\$9,695.69	\$14,100.62
10	\$394,139.00	\$23,796.31	\$9,360.80	\$14,435.51
11	\$379,703.49	\$23,796.31	\$9,017.96	\$14,778.35
12	\$364,925.14	\$23,796.31	\$8,666.97	\$15,129.34
13	\$349,795.80	\$23,796.31	\$8,307.63	\$15,488.66
14	\$334,307.14	\$23,796.31	\$7,939.79	\$15,856.52
15	\$318,450.63	\$23,796.31	\$7,563.20	\$16,233.11
16	\$302,217.52	\$23,796.31	\$7,177.67	\$16,618.64
17	\$285,598.87	\$23,796.31	\$6,782.97	\$17,013.34
18	\$268,585.54	\$23,796.31	\$6,378.91	\$17,417.40
19	\$251,168.13	\$23,796.31	\$5,965.24	\$17,831.07
20	\$233,337.07	\$23,796.31	\$5,541.76	\$18,254.55
21	\$215,082.51	\$23,796.31	\$5,108.21	\$18,688.10
22	\$196,394.41	\$23,796.31	\$4,664.37	\$19,131.94
23	\$177,262.47	\$23,796.31	\$4,209.93	\$19,586.33
24	\$157,676.14	\$23,796.31	\$3,744.81	\$20,051.50
25	\$137,624.64	\$23,796.31	\$3,268.59	\$20,527.72
26	\$117,096.92	\$23,796.31	\$2,781.03	\$21,015.26
27	\$96,081.56	\$23,796.31	\$2,281.94	\$21,514.37
28	\$74,567.29	\$76,338.26	\$1,770.97	\$74,567.29

The final payment includes a balloon of \$52,541.95 together with the regular payment of \$23,796.31.

EXHIBIT B

BILL OF SALE

Irving Leasing Corporation ("Seller"), a corporation organized and existing under the laws of the State of New York, and which is the owner of the full legal and beneficial title of the following General Motors Model GP-40 3000 H.P. Diesel-Electric Locomotive ("Locomotive"):

[Insert Serial Number and RSR Road Number]

for and in consideration of Eighty-Four Thousand Nine Hundred Eighty and 67/100 United States Dollars (U.S. \$84,980.67), paid to it by Genesee and Wyoming Industries, Inc. ("Purchaser"), a corporation organized and existing under the laws of the State of Delaware, does hereby sell, grant, transfer and deliver all right, title and interest in and to such Locomotives, free and clear of all mortgages, pledges, liens, claims, charges, encumbrances, security interests, or rights in rem of any kind to Purchaser and its successors and assigns, to have and to hold singularly the said property forever. The interest transferred by this Bill of Sale is that of absolute ownership. Except for the representations, warranties and agreements expressly set forth in the next two following paragraphs, which shall survive the delivery hereof, the transfer and sale made by the Seller pursuant hereto is made on an "AS IS, WHERE IS" BASIS IN WHATSOEVER CONDITION THE LOCOMOTIVE MAY BE IN AT THE TIME OF SUCH SALE, WITHOUT ANY SURVIVING REPRESENTATIONS, AGREEMENTS OR WARRANTIES OF THE SELLER WHATSOEVER, EXPRESS OR IMPLIED, AS TO VALUE, CONDITION, DESIGN, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, FREEDOM FROM PATENT INFRINGEMENT, USE, OPERATION, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE WHATSOEVER OF THE LOCOMOTIVE OR ANY PART THEREOF OR ANY OTHER REPRESENTATION, WARRANTY OR AGREEMENT WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE LOCOMOTIVE OR ANY PART THEREOF.

Seller expressly hereby warrants and represents that

- (i) Seller has good and valid title to and owns the Locomotive, free and clear of all liens, claims, and encumbrances whatsoever;
- (ii) upon execution and delivery of this Bill of Sale, Seller has conveyed to Purchaser good and valid title to the Locomotive, free and clear of all liens, claims and encumbrances whatsoever;
- (iii) Seller has full right, power and authority to convey the Locomotive to Purchaser and the execution and delivery of this Bill of Sale and the sale of the Locomotive by Seller to Purchaser pursuant hereto have been duly authorized by all required corporate action of Seller.

Seller hereby assigns to Purchaser any warranty rights that Seller may have against a manufacturer, refurbisher or other

• party with respect to the Locomotive, to the extent such warranty rights are assignable. With respect to any warranty rights that are not assignable, Seller hereby appoints Purchaser as its agent and attorney-in-fact for the purpose of enforcing such warranty rights.

IN WITNESS WHEREOF, IRVING LEASING CORPORATION has caused its corporate name to be hereto subscribed and its corporate seal to be hereto affixed by \_\_\_\_\_, its \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 1986.

IRVING LEASING CORPORATION

By: \_\_\_\_\_

[Corporate Seal]

Witness and Attest:

By: \_\_\_\_\_

STATE OF  
COUNTY OF

)  
) SS:

On this \_\_\_\_\_ day of September, 1986, before me personally came \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he resides at \_\_\_\_\_ in the Town of \_\_\_\_\_; that he is \_\_\_\_\_ of Irving Leasing Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

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EXHIBIT C

INTERCREDITOR AGREEMENT, dated as of September , 1986, among GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("GECC"), having an office at 1600 Summer Street, Stamford, Connecticut 06905; IRVING LEASING CORPORATION, a New York corporation (the "Senior Lender"; together with GECC the "Lenders" and each individually a "Lender"), having an office at One Pennsylvania Plaza, New York, New York 10119; ROCHESTER & SOUTHERN RAILROAD, INC., a New York corporation ("RSR"), having its office at 3846 Retsof Road, Retsof, New York 14539 and GENESEE AND WYOMING INDUSTRIES INC., a Delaware corporation ("G&W"), having its office at 71 Lewis Street, Greenwich, Connecticut 06830.

WHEREAS, pursuant to a Loan Agreement, dated as of June 30, 1986 (the "Loan Agreement"), between GECC and RSR, GECC has agreed to make a secured loan to RSR in the principal amount of \$4,500,000 to be evidenced by a Note (the "GECC Note") for the purpose of acquiring certain railroad assets as described in the Loan Agreement;

WHEREAS, pursuant to a Mortgage, Security Agreement and Assignment of Leases and Rents, dated as of June 30, 1986, between RSR and GECC (the "GECC Mortgage"), RSR has granted a first and prior mortgage on and security interest in certain collateral and a second mortgage on and security interest in certain collateral and has assigned certain leases and rents as collateral and has agreed to grant a second mortgage on and security interest in the Shared Collateral (as such term is hereinafter defined), all as provided in the GECC Mortgage, to GECC to secure RSR's obligation to pay the principal of and premium and interest on the GECC Note and certain other obligations as defined in the GECC Mortgage (the "GECC Obligations");

WHEREAS, pursuant to a certain Promissory Note and Agreement, dated the date hereof, between G&W and the Senior Lender (the "Senior Lender Note"), the Senior Lender has agreed to make a loan to G&W in the principal amount of \$509,884.02 from time to time to enable G&W to purchase from the Senior Lender six locomotives (the "Locomotives") described on Schedule A hereto and, pursuant to a certain Mortgage of Locomotives (the "Senior Lender Mortgage"), dated the date hereof, from G&W to the Senior Lender, G&W has agreed to grant to the Senior Lender from time to time upon the acquisition by G&W thereof a first security interest in and lien on the Locomotives and certain other property (collectively, the "Shared Collateral") to secure the G&W's obligation to pay the principal of and interest on the Senior Lender Note and any other amounts due and owing under the Senior Lender Note or the Senior Lender Mortgage (the "Senior Lender Obligations");

WHEREAS, G&W, upon the purchase of each of the Locomotives from the Senior Lender, shall transfer the same, subject to the Senior Lender Mortgage, to RSR;

WHEREAS, each of GECC and the Senior Lender has taken or will take steps to perfect their respective security interests in or liens on the Shared Collateral including, without limitation, the filing of financing statements by the Senior Lender with the Secretary of State of Connecticut under the Connecticut Uniform Commercial Code (the "CUCC"), the filing of financing statements by GECC and the Senior Lender with the Secretary of State of the State of New York under the New York Uniform Commercial Code (the "NYUCC") and the recording of the appropriate documents with the Interstate Commerce Commission ("ICC"); and

WHEREAS, GECC and the Senior Lender desire to establish and agree to the relative priority of their respective security interests in or liens on the Shared Collateral and certain other rights, priorities and interests.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, it is hereby agreed as follows:

#### ARTICLE I

##### Definitions

When used herein, the following terms have the following meanings:

"Enforcement" shall mean demand for payment or acceleration by the Senior Lender of the Senior Lender Note or the Senior Lender Obligations or by GECC of the GECC Note or the GECC Obligations, repossession by either the Senior Lender or GECC of any Shared Collateral, or commencement of the judicial enforcement of any of the rights and remedies by the Senior Lender under the Senior Lender Note, the Senior Lender Mortgage, any related agreements or applicable law or by GECC under the Loan Agreement, the GECC Note, the GECC Mortgage, any related agreements or applicable law.

"Enforcement Notice" shall mean a written notice delivered at a time when an "Event of Default" (as defined in the Senior Lender Note) has occurred and is continuing, by the Senior Lender to GECC specifying the relevant Event of Default and stating the current balance of the Senior Lender Note and the amount thereof then due.

## ARTICLE II

### Intercreditor Agreement

SECTION 2.1 Lien Priorities. (a) Notwithstanding the date, manner or order of perfection of the security interests and liens granted GECC or the Senior Lender with respect to the Shared Collateral, and notwithstanding any provisions of the CUCC, the NYUCC, the Interstate Commerce Act or any rules or regulations promulgated by the ICC thereunder, or any other applicable law or decision, or the Loan Agreement, the GECC Note, the GECC Mortgage or any related agreement, or the Senior Lender Note, the Senior Lender Mortgage or any related agreement, or whether GECC or the Senior Lender shall have possession of all or any part of the Shared Collateral, as between GECC and the Senior Lender, the Senior Lender shall have a first and prior security interest in the Shared Collateral, in an amount equal to the aggregate outstanding amount of the Senior Lender Obligations, and the security interest of GECC in the Shared Collateral shall be fully subject and subordinate, with respect to rights, remedies and priorities, to the security interest therein of the Senior Lender. GECC and the Senior Lender hereby agree that to the extent that the terms and provisions of the Loan Agreement, the GECC Note, the GECC Mortgage, the Senior Lender Note, the Senior Lender Mortgage or any other agreement between or among any of GECC, the Senior Lender, RSR and/or G&W are inconsistent with this Intercreditor Agreement, such terms and provisions, to the extent of any such inconsistency, shall be superseded by this Intercreditor Agreement.

(b) The priorities established hereunder are only as between GECC and the Senior Lender with respect to the Shared Collateral and to the extent that the operation of the provisions of this Intercreditor Agreement would otherwise entitle any person (including a debtor in possession or trustee in bankruptcy) to either a priority over both parties or a right to avoid the mortgage, lien or security interest of either GECC or the Senior Lender, or both, then (and only to such extent) this Intercreditor Agreement shall be null and void. This Intercreditor Agreement shall not affect GECC's first and prior lien and mortgage on and security interest in and assignments of RSR's estate, right, title and interest to its properties and proceeds therefrom other than the Shared Collateral, or its rights and remedies with respect thereto, and the Senior Lender disclaims any lien thereon or security interest therein.

(c) Nothing in this Agreement shall be deemed to affect or limit any of the terms or conditions of the "Proposal Memorandum for Six (6) General Motors Model GP 40 Locomotives, Seven Year Financing", dated March 14, 1986, made by the Senior Lender to G&W and accepted by G&W on April 2, 1986, as amended and supplemented by the letter agreement, dated April 14, 1986, between G&W and the Senior Lender, and the letter agreement,

dated April 16, 1986, between G&W and the Senior Lender, the provisions of which documents shall be deemed to survive the execution and delivery of this Agreement.

SECTION 2.2. Distribution of Proceeds from Shared Collateral. All proceeds of the Shared Collateral shall be paid to the Senior Lender for application as follows:

FIRST: To the payment of the whole amount of the Senior Lender Obligations then due, owing and unpaid; and

SECOND: To GECC to be applied and distributed in accordance with the GECC Mortgage.

SECTION 2.3. Enforcement Actions and Cure Rights.

(a) The Senior Lender agrees that it shall not commence an Enforcement unless (i) G&W shall fail to (1) make any payment of principal or interest on the Senior Lender Note within 10 days after the same shall become due, (2) maintain the condition of the Shared Collateral as required by the Senior Lender Note, (3) keep the Shared Collateral free of liens, encumbrances, pledges and security interests (except the liens in favor of the Senior Lender and GECC referred to in this Intercreditor Agreement) as required by the Senior Lender Note, (4) maintain as fully perfected the Senior Lender's first and prior security interest in the Shared Collateral as required by the Senior Lender Note, or (5) make any indemnity payment required by the Senior Lender Note; (ii) the Senior Lender has given an Enforcement Notice to GECC with respect to such failure and (iii) in the case of any such failure to make a payment, within seven days after the giving of such Enforcement Notice or, in the case of any other such failure, within 30 days after the giving of such Enforcement Notice, such failure shall be continuing. GECC may, but shall not be obligated to, make any such payment (including payment of any interest or late charges imposed by the terms of the Senior Lender Note or the Senior Lender Mortgage with respect thereto) or perform any such obligation prior to the expiration of the period specified above with respect thereto, and such payment or performance in full shall be deemed to have cured such failure; provided, however, that (A) the Senior Lender shall not be required to give an Enforcement Notice to GECC and shall not be restricted from commencing an Enforcement and GECC shall not be entitled to cure any such failure if such failure shall be the fourth failure to occur during the preceding twelve-month period; and (B) the Senior Lender may commence an Enforcement immediately, with prior or simultaneous notice to GECC if (1) G&W shall fail to maintain insurance with respect to the Shared Collateral as required by the Senior Lender Note, or (2) an Event of Default shall have occurred under Section 4.01(g), (h), (i) or (j) of the Senior Lender Note.



(b) GECC agrees that if the Senior Lender shall have commenced an Enforcement pursuant to paragraph (a) above, the Senior Lender shall have the right to determine, in its sole discretion, the manner in which and the time period during which the Senior Lender shall exercise its rights and remedies under the Senior Lender Note and the Senior Lender Mortgage. GECC further agrees that the only obligation that the Senior Lender shall have to GECC upon the commencement by the Senior Lender of an Enforcement is to pay over to GECC any proceeds from the Shared Collateral in excess of the Senior Lender Obligations.

(c) GECC agrees that it shall not commence an Enforcement unless (i) GECC shall obtain the prior written consent of the Senior Lender to such Enforcement or (ii) the Senior Lender Obligations shall have been paid in full. GECC agrees to give written notice the Senior Lender if a default shall occur under the Loan Agreement, GECC Note or the GECC Mortgage.

SECTION 2.4. Additional Credit Extensions by the Senior Lender. The Senior Lender shall not, without the prior written consent of GECC, extend credit to RSR or G&W secured by the Shared Collateral in excess of \$509,884.02 and accrued interest thereon, less payments received by the Senior Lender with respect thereto; provided, however, that, in the event of any failure described in clauses (2), (3), (4) or (5) of Section 2.3(a)(i) hereof, the Senior Lender may extend credit during the period between the delivery of the Enforcement Notice with respect to such failure and the expiration of the 30-day period during which GECC may cure such failure, and in the event of any failure described in clause (B)(1) of the proviso of Section 2.3(a) hereof, the Senior Lender may extend credit immediately upon such failure, in each case to the extent necessary to protect the Senior Lender against the consequences of such failure and such credit shall be secured by the Senior Lender Mortgage and shall be entitled to the priority provided for in this Intercreditor Agreement.

SECTION 2.5. Cooperation; Accountings. Each of the Lenders will, upon the reasonable request of the other, from time to time execute and deliver or cause to be executed and delivered such further instruments and do and cause to be done such further acts as may be necessary or proper to carry out more effectively the provisions of this Intercreditor Agreement. Each of the Lenders agree to render accountings to the other upon reasonable request, providing information regarding the application of the proceeds, if any, of the Shared Collateral.

SECTION 2.7. Receipt of Proceeds. In the event of any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of the proceeds of the Locomotives, to creditors of RSR or G&W or any sale, receivership, insolvency or bankruptcy

proceeding, or assignment for the benefit of creditors, or any proceeding by or against RSR or G&W for any relief under the bankruptcy or insolvency law or laws relating to the relief of debtors, readjustment of indebtedness, reorganization, compositions or extensions, then and in any such event GECC agrees that any payment or distribution of any kind or character either in cash, securities or other property which shall be payable upon or with respect to the Locomotives or the proceeds thereof and shall be received by GECC shall, to the extent of the balance then due on the Senior Lender Obligations, be paid or delivered directly to the Senior Lender for application with respect to the Senior Lender Obligations.

### ARTICLE III

#### Miscellaneous

SECTION 3.1. Notices Hereunder. All notices hereunder shall be effective upon receipt, whether sent by mail, by hand or by telex, and shall be addressed as set forth above, but to the attention of the following: (a) the Senior Lender, attention: General Manager; (b) GECC, attention: President; (c) RSR, attention: Mortimer B. Fuller, III; (d) G&W, attention: President; or (e) to such other address or person as any party hereto may designate in writing to the other parties.

SECTION 3.2. Independent Credit Investigations; Loan Documents. Neither of the Lenders nor any of their respective directors, officers, representatives, agents or employees shall be responsible to the other or to any other person for RSR's or G&W's solvency, financial condition or ability to repay the GECC Obligations or the Senior Lender Obligations, or for statements of RSR or G&W, oral or written, or for the validity, sufficiency or enforceability of the GECC Obligations or the Senior Lender Obligations, the Loan Agreement, the GECC Note, the GECC Mortgage, the Senior Lender Note or the Senior Lender Mortgage or any liens or security interests granted by RSR or G&W in connection therewith. Each Lender has entered into its respective financing arrangements with RSR and/or G&W based upon its own independent investigation, and makes no warranty or representation to the other Lender nor does it rely upon any representation of the other Lender with respect to matters identified or referred to in this Section.

SECTION 3.3. Limitation on Liability. Except as provided in this Agreement, neither of the Lenders shall have any liability to the other Lender or to others with respect to the matters referred to herein.

SECTION 3.4. Amendments. All modifications or amendments of this Intercreditor Agreement must be in writing and duly executed by an authorized officer or representative of each

Lender to be binding and enforceable, but no consent or other action of either RSR or G&W shall be required therefor.

SECTION 3.5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but does not otherwise create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

SECTION 3.6. Governing Law. This Intercreditor Agreement shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 3.7. Severability. Any provision of this Intercreditor Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 3.8. No Waiver. No waiver shall be deemed to be made by the Senior Lender of any of the Senior Lender's rights under this Intercreditor Agreement unless the same shall be in writing signed on behalf of the Senior Lender and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Senior Lender in any regard with respect to the obligations of GECC to the Senior Lender in any other respect at any other time.

SECTION 3.9. Termination. This Intercreditor Agreement shall terminate upon the payment in full of the GECC Obligations or the Senior Lender Obligations.

SECTION 3.10. Headings. The headings in the Intercreditor Agreement are for convenience of reference only and shall not define or limit the terms hereof.

IN WITNESS WHEREOF, the parties have executed this  
• Intercreditor Agreement as of the day and year first above  
written.

GENERAL ELECTRIC CREDIT CORPORATION

by \_\_\_\_\_

Title: \_\_\_\_\_

IRVING LEASING CORPORATION

by \_\_\_\_\_

ROCHESTER & SOUTHERN RAILROAD, INC.

by \_\_\_\_\_

Title: \_\_\_\_\_

GENESEE AND WYOMING INDUSTRIES, INC.

by \_\_\_\_\_

Title: \_\_\_\_\_

Schedule A

Six (6) General Motors Corporation Electro-Motive Division (EMD) Model GP40 3000 Horsepower four axle diesel electric locomotives with the former Conrail road numbers 3056, 3057, 3059, 3063, 3072 and 3079 overhauled and refurbished under contract by Chrome Locomotive, Inc. numbered by Rochester & Southern Railroad as follows:

<u>Former Conrail Road No.</u>	<u>Serial No.</u>	<u>RSR Rd. No.</u>
3056	33220	101
3057	33221	102
3059	33223	103
3063	33227	104
3072	33236	105
3079	33243	106